



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hausmann Industries, Inc.

File: B-226719

Date: June 19, 1987

DIGEST

1. Protest that agency should have placed order against nonmandatory Federal Supply Schedule contract is denied where agency solicited oral quotations under small purchase procedures and another firm submitted lower price.
2. Protest of solicitation cancellation raised 2 months after the cancellation is untimely under General Accounting Office Bid Protest Regulations and will not be considered.

DECISION

Hausmann Industries, Inc. protests the award to Diversified Health Care Services, Inc. of a purchase order for 44 examination tables based on oral quotations solicited under request for quotations (RFQ) No. F17600-87-Q0642, issued by Loring Air Force Base. Hausmann argues that the Air Force should instead have placed an order against its nonmandatory Federal Supply Schedule (FSS) contract. We deny the protest in part and dismiss it in part.

Prior to issuing the RFQ, the Air Force issued invitation for bids (IFB) No. F17600-86-BA014 for 42 examination tables. Of the 13 bids received, 11 were rejected as non-responsive, and the remaining 2 were determined to be unreasonably high. The contracting officer determined that the specifications were overly restrictive and did not conform to standard commercial items available on the open market. Based on her findings that the specifications were inadequate and that the acceptable bids were unreasonably high, the contracting officer canceled the IFB pursuant to the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(c)(1) and (6) (1986). The contracting officer then notified Hausmann that "an attempt would be made" to purchase the tables from the FSS, and that Hausmann

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would be considered for award since it held a Veterans Administration^{1/} FSS contract.

The Air Force subsequently issued the RFQ which contained amended specifications. Pursuant to the small purchase procedures set forth in the FAR, 48 C.F.R. Part 13, which apply where the aggregate amount of the supplies to be purchased does not exceed \$25,000, the contracting officer sought oral quotations from the six low bidders under the canceled IFB, including Hausmann. In response, Diversified Health Care quoted the low price of \$387.41 per table. Hausmann quoted its FSS price of \$433.64, which was third low.

Hausmann contends that as the holder of an FSS contract, it should have received the order since it understands that the Department of Defense requires the use of FSS contracts as a prime source of supply, even where such contracts are not mandatory.

Hausmann does not identify what imposes the requirement to use a nonmandatory schedule, and we are not aware of such a requirement. Thus, under the circumstances here, where the contracting officer ascertained through the solicitation of oral quotations under the small purchase procedures that the purchase could be made more advantageously from a source other than Hausmann, we do not believe that the agency was obligated to make award to the protester at a higher price merely because it held an FSS contract which did not specify the Air Force as a mandatory user. See FAR, 48 C.F.R. § 8.404; IVAC Corp., B-221730, Mar. 31, 1986, 86-1 CPD ¶ 305.

The protester further argues that it should have been awarded the contract because its tables are superior to the tables offered by Diversified, and because the agency has in the past acquired Hausmann tables.

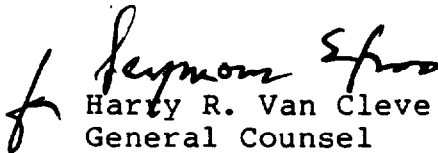
The procuring agency has the primary responsibility for determining its needs, drafting requirements that reflect those needs, and determining whether a product offered meets its requirements. We will not disturb an agency's decision as to the best method of accommodating its needs, or the agency's decision whether an offered item meets those needs, absent a clear showing by the protester that the decision was unreasonable. Elsco International, B-215664, Dec. 17, 1984, 84-2 CPD ¶ 672. Here, the Air Force has determined

^{1/} Apparently the use of Hausmann's FSS contract was nonmandatory for the Air Force.

that the tables offered by Diversified will meet its needs, and Hausmann has offered no evidence (other than its opinion that its table is better) that this determination was unreasonable. Hence we have no basis upon which to object to the agency's determination that Diversified's table was acceptable.

Hausmann also argues that the agency improperly determined that the specifications contained in the original IFB were overly restrictive. We will not consider this argument since it was first raised in the protester's comments on the agency report approximately 2 months after the solicitation was canceled. Our Bid Protest Regulations require that protests concerning matters other than solicitation defects be filed not later than 10 days after the basis of the protest was or should have been known. 4 C.F.R. § 21.2(a)(2) (1986).

The protest is denied in part and dismissed in part.


Harry R. Van Cleve
General Counsel